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NOTE

From: General Secretariat of the Council
To: Council
Subject: Ensuring preparedness for the Digital Services Act enforcement
- *Background note from the Commission*

Delegations will find attached a background note from the Commission on Ensuring preparedness for the Digital Services Act enforcement with a view to the AOB items at the meeting of the Competitiveness Council on 7 December 2023.

Competitiveness Council (Internal Market and Industry)**7 December 2023****Background note for the AOB point on:*****Ensuring preparedness for the Digital Services Act enforcement***

With the Digital Services Act (“DSA” or “Regulation”)¹, the European Union has put in place **ground-breaking new harmonized rules** for intermediary services to shape a predictable and trusted online environment that facilitates innovation and effectively protects fundamental rights enshrined in the Charter.

The **entry into application** of the DSA is gradual. It will apply as of 17 February 2024 entirely. However, several provisions apply already from 16th November 2022; furthermore, since the end of August, the DSA applies to 19 very large online platforms and search engines that have been designated by the Commission on 25 April 2023.

The Regulation puts in place a **governance structure** to ensure cooperation and coordination between the competent authorities of the Member States and the Commission in monitoring and enforcing those obligations.

The **Commission** is the **regulator** for the designated very large online platforms and search engines, with exclusive jurisdiction for the monitoring and enforcement of compliance of the DSA obligations related to systemic risks. For this purpose, it is equipped with wide-ranging investigatory and supervisory powers, including the power to impose sanctions and remedies. In practice, the Commission is already deploying its enforcement powers to ensure that the designated services are compliant with the DSA-rules.

Independent Digital Services Coordinators (“DSCs”) and other national competent authorities will be responsible for supervising compliance with the Regulation of those intermediary services established on their Member States territory, and to contribute to the cooperation with other DSCs, the Board and the Commission. The Member States are obliged to designate their DSCs and national competent authorities **by 17 February 2024**.

Furthermore, the **European Board for Digital Services** (“Board”) which will be established by 17 February 2024 and composed by the DSCs will advise the Commission and the DSCs in the enforcement of the DSA.

¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

Taking into consideration the above, for an **effective supervision and enforcement** of the DSA at European and national level it is **crucial that the DSCs are designated** in due time. **The Commission counts on all Member States to be ready by 17 February 2024 at the latest.** The lack of a designated DSC would cause disadvantages for the respective Member States, its citizens and businesses, as the Regulation could not be effectively enforced in that Member State.

So far, less than 10% of Member States have already formally designated their DSC². In many Member States, however, regulatory authorities have been preliminarily identified to assume the role of DSC and the national legislative processes have been initiated. **The Commission calls on these Member States to complete such processes swiftly.** Where a designation by 17 February 2024 is at risk, the **Commission stands ready to continue supporting Member States** bilaterally and in fora like the Digital Services Expert Group in their efforts to fulfill their obligations under the DSA.

In the current period of conflict and instability related to Russia's war of aggression against Ukraine and the Hamas terrorist attack on Israel, violence and war increasingly reverberate online in the Union given the wide reach of social media. This led to an unprecedented increase in illegal and harmful content being disseminated online, including coordinated actions to spread disinformation and misinformation throughout the Union in relation to such international crises. Against this background, the Commission has adopted on 20 October 2023 a set of recommendations³ for Member States to fast track the DSA governance. The Recommendation sets out mechanisms of preparedness, cooperation and coordination between the Commission and the Member States ahead of the full application of the DSA on 17 February 2024, in a spirit of sincere cooperation, to allow a speedy transition towards the application of that Regulation and to ensure its full effectiveness since inception. Almost all Member States have since then appointed their DSCs or prospective DSCs for the **Informal Network** that has been established in the meeting on 27 October 2023. The Informal Network is meeting regularly. The Commission welcomes the statements of the DSCs and prospective DSCs to share evidence with the Commission based on the clarification of the latter in the Informal Network what constitutes useful evidence. Additionally, the Commission is signing **administrative arrangements** with national authorities to develop expertise and capabilities.

The Commission underlines that the preparedness of the Member States is not limited to set-up the necessary enforcement structure; also **national legal orders have to be modified, where applicable, to ensure full consistency with the DSA** by 17 February 2024 at the latest. In view of the Court of Justice's judgment of 9 November 2023 in Case C-376/22, the Commission stands ready to support Member States in this endeavor.

The Commission wishes to update the Ministers about this important topic and seek their support.

² <https://digital-strategy.ec.europa.eu/en/policies/dsa-cooperation>

³ C(2023) 7170 final, Commission Recommendation of 20.10.2023 on coordinating responses to incidents in particular arising from the dissemination of illegal content, ahead of the full entry into application of Regulation (EU) 2022/2065 (the 'Digital Services Act').